APPEAL NO. 010757

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 8, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability within the meaning of the 1989 Act because she did not sustain a compensable injury. In her appeal, the claimant essentially argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response, the respondent (carrier) contends that the claimant's appeal is untimely. In the alternative, the carrier urges affirmance.

DECISION

Affirmed.

Initially, we will consider the carrier's assertion that the claimant's appeal was untimely. In her appeal, the claimant acknowledges that she received the hearing officer's decision on March 24, 2001, four days after it was distributed. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal is presumed to be timely if it is mailed within 15 days of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) within 20 days of the date of receipt. The 15th day after March 24, 2001, was Sunday, April 8, 2001. Pursuant to Rule 102.3, the period to timely mail an appeal extended to Monday, April 9, 2001, the next working day. The claimant's appeal is postmarked April 9, 2001, and was received by the Commission on April 12, 2001, and is, therefore, timely.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence, and determines what facts have been established from the evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ; St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer was acting within his province as the fact finder in determining that the claimant did not sustain her burden of proving that she was injured at work on _____. Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to compel its reversal on appeal.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability

within the meaning of the 1989 Act. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge